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HUMAN RIGHTS COMMITTEE
Fifty-seventh session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

NIGERIA

1. Following the examination of the initial report of Nigeria insofar as it related to the application of articles 6, 7, 9 and 14 of the Covenant in Nigeria, the Committee, at its 1499th meeting, on 3 April 1996, adopted certain urgent recommendations. These included the abrogation of all decrees establishing special tribunals or revoking normal constitutional guarantees of fundamental rights or the jurisdiction of the normal courts as well as the adoption of urgent steps to ensure that persons facing trial were afforded all guarantees of a fair trial (see document CCPR/C/79/Add.64, paras. 11 to 13).

2. The dialogue with Nigeria continued during the fifty-seventh session. At its 1526th and 1527th meetings (fifty-seventh session), held on 24 July 1996, the Committee adopted the following Concluding Observations:

A. Introduction

3. The Committee welcomes the opportunity to resume the dialogue with the Government of Nigeria through a high ranking delegation that included members of the newly established National Human Rights Commission.

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B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee notes that the continuation of the military regime and in particular the suspension of constitutional guarantees of rights by decrees of that regime are an obstacle to the effective implementation of rights protected under the Covenant.

5. The Committee notes also that the failure of the Government to undertake an analysis of laws and procedures, including customary laws to assess the compatibility with the Covenant has prevented the effective implementation of rights protected by the Covenant.

6. Inter-ethnic and inter-religious violence which persist in Nigeria appear to affect adversely the enjoyment of rights and freedoms protected by the Covenant.

C. Positive aspects

7. The Committee notes the measures that have been taken by the Government since the fifty-sixth session to overcome some obstacles to the enjoyment of rights which were identified by the Committee. It appreciates that the newly enacted Civil Disturbances (Special Tribunal) (Amendment) Decree removes military personnel from the Civil Disturbances Tribunal and provides for the right of appeal from its sentences and convictions. It welcomes the repeal of Decree No. 14 of 1994 (which precluded courts from issuing writs of habeas corpus) by the State Security (Detention of persons) (Amendment) (No 2) (Repeal) Decree, adopted on 7 June 1996. It also notes that a panel has been established to review cases of detention under Decree No. 2 of 1984.

8. The Committee welcomes the fact that municipal elections have been held; that political parties have been registered; that preparations are proceeding for national elections; and that the year for these elections has been announced.

9. The Committee welcomes the adoption of Decree No 22 of 1995, establishing the National Human Rights Commission which has been given certain responsibilities regarding the promotion and protection of human rights.

10. It further welcomes the establishment of a Ministry of Women's Affairs and Social Welfare. It also welcomes measures taken to promote the participation of women at all levels of the political, economic and social life of the country.

11. The Committee also welcomes the willingness of the Nigerian government to undertake an analysis of the legal system in the light of its obligations under the Covenant and to seek the technical assistance from the Center for Human Rights in this process.

D. Principal subjects of concern

12. The Committee notes with deep concern that measures have not been adopted to address all the issues of concern identified by the Committee at its fifty-sixth session and to implement the urgent recommendations in its preliminary concluding observations (see CCPR/C/79/Add.64). In particular, the Committee is concerned that the Government of Nigeria

has not abrogated the Decrees establishing special tribunals or those revoking normal constitutional guarantees of fundamental rights as well as the jurisdiction of the normal courts. The Committee deplores the statement of the delegation that the decrees are not to be abrogated because they pre-dated the entry into force of the Covenant in Nigeria and are an essential part of military rule in Nigeria. The Covenant precludes measures derogating from the state party's obligations other than in the limited circumstances provided for by article 4 which have not been applied in the case of Nigeria.

13. The Committee expresses its grave concern that the continuation of Military Government and rule by Presidential decrees which suspend or override constitutional rights and which are not open to review by the courts are incompatible with the effective implementation of the Covenant.

14. The Committee wishes to reiterate that there remain fundamental inconsistencies between the obligations undertaken by Nigeria to respect and ensure rights guaranteed under the Covenant and the implementation of those rights in Nigeria. It is further concerned that there is no legal protection of rights in Nigeria, as a consequence of the non applicability of the 1989 Constitution and the adoption of Decree No 107 of 1993 that re-established the 1979 Constitution, while excluding the application of the section dealing with basic rights. Another concern of the Committee is the number of decrees suspending or restoring previous laws, with exceptions in some cases. The result appears to be uncertainty as to which rights may be invoked and which are suspended.

15. The Committee must repeat its earlier expression of serious concern in relation to the establishment by decree of special tribunals which operate without observing the requirements of fair trial as required by article 14 of the Covenant.

16. The Committee is concerned that, under Nigerian law, the death penalty may be imposed for crimes which do not constitute "the most serious offences" as required by article 6 of the Covenant and that the number of death sentences passed and actually carried out is very high. The fact that sentences of death are passed without the safeguard of fair trial violates the provisions of articles 14(1) and 6 of the Covenant. Public executions are also incompatible with human dignity.

17. The Committee notes with concern that, following the introduction of measures to overcome certain specific violations of rights in regard to the composition of special tribunals and the right of appeal no compensation has been offered to victims of the human rights abuses which had already occurred under the previous measures.

18. The Committee is deeply concerned by the high number of extra-judicial and summary executions, disappearances, cases of torture, ill-treatment, and arbitrary arrest and detention by members of the army and security forces and by the failure of the government to investigate fully these cases, to prosecute alleged offences, to punish those found guilty and provide compensation to the victims or their families. The resulting state of impunity encourages further violations of Covenant rights.

19. The Committee is disturbed at the poor conditions in places of detention that include severe overcrowding, lack of sanitation, lack of adequate food, clear water and health care, all

of which contribute to a high level of death in custody. The Committee emphasizes that it is incompatible with the Covenant to hold prisoners under conditions which do not meet the basic guarantees provided in article 10 of the Covenant as well as in the United Nations Standard Minimum Rules for the Treatment of Prisoners, despite its adoption of prison regulations, contained in Chapter 366 of the Prisons Act (1990).

20. The Committee is concerned at the large number of persons detained without charge, and the lengthy periods of pretrial detention which are incompatible with article 9 of the Covenant. It is particularly concerned that incommunicado detention is commonly ordered and often for indefinite periods and without access to judicial review, in violation of article 9 of the Covenant.

21. The Committee is seriously concerned at violations of the right to freedom of expression, as exemplified by the adoption of a number of decrees suspending newspapers, as well as the arbitrary arrest, detention and harassment of editors or journalists.

22. The Committee notes with concern the extent of restrictions to the freedom of association and assembly in law and in practice. The Committee is concerned by numerous reports it received according to which members of unions were harassed and intimidated, sometimes even arrested and detained, that the dissolution of certain unions has been ordered by the Government.

23. The Committee is concerned by the arrest and detention of officers of human rights organizations, involving violations of articles 9 and 22 of the Covenant and interfering with the free exercise of the significant role played by such organizations in the protection of human rights.

24. The Committee takes note of allegations by a Nigerian non-governmental organization (Civil Liberty Organization) that two of its officials were prevented by the State Security Service from attending the fifty-sixth session of the Committee and had their passports impounded. It regrets that despite a letter by the Chairman giving details of these allegations, an investigation was not completed before the fifty-seventh session and that no information could be provided about the circumstances alleged. Preventing persons from leaving their country violates article 12(2) of the Covenant and is incompatible with the State's obligation to cooperate with the Committee to prevent them from leaving in order to attend meetings of the Committee.

25. The Committee expresses its concern about the situation of women in Nigeria, particularly as regards their low level of participation in public life and the continued application of marriage regimes which permit polygamy and do not fully respect the equal rights of women. It expresses particular concern about the widespread practices of forced marriage and of genital mutilation of girls.

E. Suggestions and recommendations

26. The Committee recommends that immediate steps be taken to restore democracy and full constitutional rights in Nigeria without delay.

27. As already recommended by the Committee, all decrees revoking or limiting guarantees of fundamental rights and freedoms should be abrogated. All courts and tribunals must comply with all standards of fair trial and guarantees of justice prescribed by article 14 of the Covenant.

28. The Committee recommends that a review of the legal framework for the protection of human rights in Nigeria be undertaken in order to ensure that the principles of the Covenant are incorporated into the legal system and that effective remedies are provided in case of violations of rights.

29. The Committee also recommends that Decree No 107 of 1993 and any other measures which abrogate or suspend the application of the basic rights enshrined in the 1979 Constitution, be abrogated, so that the legal protection of these rights is restored in Nigeria. The Committee recommends that the State party ensure that there is no such abrogation or derogation in future other than in strict compliance with article 4, in time of public emergency which threatens the life of the nation and which is officially proclaimed and communicated to the Secretary General of the United Nations.

30. The Committee requests the State party to take effective measures to implement the full and equal enjoyment by women of rights and freedoms protected by the Covenant. These measures should ensure the equal participation by women at all levels of the political, social and economic life of the country. The Committee recommends that steps should be taken, in particular through education, to overcome certain traditions and customs, such as female genital mutilation and forced marriages which are incompatible with the equality rights of women.

31. The Committee recommends that the State party consider the abolition of the death penalty. Until its abolition the State party must ensure that the application of the death penalty be strictly limited to the most serious crimes as required by article 6 (2), of the Covenant, and that the number of crimes for which the death penalty is imposed be reduced to the minimum. Urgent steps should be taken to ensure that persons facing trials are afforded all the guarantees of a fair trial as explicitly provided for in article 14 (1), (2) and (3) of the Covenant and to have their conviction and sentence reviewed by a higher tribunal in accordance with article 14 (5) of the Covenant.

32. The Committee recommends that the Nigerian authorities take effective measures to prevent arbitrary, extra-judicial and summary executions as well as torture, ill-treatment, and arbitrary arrest and detention by members of the security forces, and to investigate any such cases in order to bring before the courts those suspected of having committed or participated in such crimes, to punish them if found guilty, and to provide compensation to victims or to their families.

33. The Committee recommends that urgent steps be taken to release all persons who have been detained arbitrarily or without charges and to reduce the period of pre-trial detention. The practice of incommunicado detention should cease. Compensation should be provided in the cases indicated by article 9(5) of the Covenant.

34. The Committee recommends that the State party take all necessary measures to ensure that the conditions of detention of persons deprived of their liberty fully meet article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. The

overcrowding of prisons should be reduced by overcoming delays in the trial process, by considering alternative forms of punishment, or by expanding the number of prison places.

35. The Committee recommends that the legislation and the practice relating to the exercise of the freedom of expression be revised and amended in order that they comply with the provisions of article 19 of the Covenant.

36. The Committee also recommends that measures be taken to ensure that the right to form and join trade unions be respected as required by article 22 of the Covenant and that the plan calling for trade union elections in October 1996 be implemented.

37. The Committee recommends that attention be given by the federal and state authorities to the situation of persons belonging to minorities, so that their rights as enshrined in article 27 of the Covenant be fully protected. In this regard, due consideration should be given to the Committee's General Comment No 23 (50).

38. The Committee wishes to emphasize that the consideration of reports submitted under article 40 of the Covenant takes place in public meetings and in the presence of representatives of the State party concerned. Representatives of non-governmental organizations, whether internationally or locally-based, are entitled to attend the meetings at which reports are being considered and to provide information to members of the Committee on an informal basis. The Government of Nigeria should ensure that individuals (including members of non-governmental organizations) are not prevented from leaving Nigeria to attend the Committee's sessions, should conduct immediate investigations into the allegations mentioned in paragraph 24 above, and should inform the Committee of the result of these investigations.

39. The Committee recommends that the government of Nigeria should ensure that the National Human Rights Commission (or other agency) take steps to inform and educate the community about the rights and freedoms protected by the Covenant and the Constitution and about the remedies available in case of violation of rights. It should seek the assistance of the Technical and Advisory Services of the United Nations Human Rights Center in this process.